

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA-ABUJA

ON 3RD DAY OF MARCH, 2021

BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI

PRESIDING JUDGE

SUIT NO: FCT/HC/CV/1956/19

MOTION NO: FCT/HC/CV/1958/19

BETWEEN:

OZAOMATA MOTORS NIGERIA LTD PLAINTIFF/RESPONDENT

AND

**1. ARCH. ABDULMUMUNI OKARA } DEFENDANTS/
2. ENGR. MOHAMMED LAWAL OMEIZA } APPLICANTS**

PARTIES ABSENT.

B.O NAFAGHA ESQ. FOR THE PLAINTIFF .

OLUWOLE ADAJA ESQ. FOR THE DEFENDANTS.

RULING

By a notice of preliminary objection filed on 16th September 2020, Mr Oluwole Adaja for the Defendants/Applicants seeks an order striking out this suit for want of jurisdiction, and further orders as the honorable court may deem fit to make in the circumstances of this application.

The application was premised on five grounds and supported by an 8 paragraph affidavit deposed to by one Miracle Udejaja, Litigation Secretary in the law firm of the learned counsel to the Defendants and learned counsel's written address wherein he raised two issues for determination thus:

“(a) Whether this Honourable Court possesses the requisite jurisdiction to entertain this suit as presented by the Claimant.

(b) Whether the originating processes particularly the statement of claim filed by the Claimant is competent.”

On 18th September 2020 Mr B.O Nafagha for the Claimants filed a reply on point of law adopting both issues raised by Mr Adaja.

ON ISSUE 1

Learned defence counsel emphasized on the importance of jurisdiction citing the locus classicus of **MADUKOLU V. NKEMDILIM (1962) 2 NSCC PAGE 37 AT 375 PARAS 45-50**. He submitted that a court is competent when, amongst other considerations, the subject matter of the action is within its jurisdiction.

He argued that a calm perusal of the statement of claim particularly paragraphs 2.4, 7 and 8 will lead the court to the irresistible conclusion that the alleged cause of action arose in Lokoja, Kogi State outside the jurisdiction of this court. Further that the Claimant, upon the institution of this action, applied for substituted service on the 1st Defendant as a result of her inability to serve the 1st Defendant personally in Abuja, which is not unconnected to the fact that the 1st Defendant is neither resident, nor works in the Federal Capital Territory.

Citing Order 3 Rules 2 and 3 of the High Court of the FCT Abuja (Civil Procedure) Rules 2018, he submitted that the proper venue to institute this action is the Kogi State High Court sitting at Lokoja.

Therefore this Honourable court is robbed of territorial jurisdiction to entertain same.

WUYEY V WUYEP (2013) 2 NWLR PAGE 337 and other authorities were relied upon.

Mr Nafagha for the Claimant in his reply on point of law on issue 1 submitted that the court has jurisdiction to entertain this suit. He urged that a person who challenges the Claimant's suit in limine is deemed to have accepted as correct all the relevant averments in the statement of claim citing **EGE SHIPPING V TIGRIS INT'L CORP. (1999) 12 SCNJ 1 at PAGE 14.**

He submitted that in the writ of summons the 1st Defendant's address for service was stated to be Flat 1, No 1, Gorauo Street off Nouakchott Street, Wuse Zone 1, Abuja.

That in paragraph 2 of the statement of claim the Claimant averred that the 1st Defendant is a public servant (not a civil servant) in charge of Sustainable Development and Growth Project, in the Government of Kogi state. That it was not deposed that the 1st Defendant is resident in Kogi state. That the 1st Defendant did not deny that he resides in Abuja. And that when the originating processes were served on the wife of the 1st Defendant in Abuja, they certainly came to the 1st Defendant's notice.

Secondly, that the Claimant's averment in paragraph 3 of the statement of claim that the 1st Defendant came to the Claimant's car stand at Kubwa Expressway, Abuja to select the cars of his choice was not denied by the 1st Defendant. He therefore urged the court to hold that the contract was made in Abuja before the cars were supplied in Lokoja, Kogi State.

He further urged that the 2nd Defendant resides in Abuja and gave evidence before this court that his address is No 3, Near Police Port Zone 6, Wuse Abuja.

Lastly, he submitted that the claim in this suit is for payment for the vehicles supplied to the 1st Defendant on credit. That it is trite law that a debtor has a duty in law to look for his creditor to pay his debt, thus making the FCT High Court the proper court to institute this action. **ALL STATES TRUST BANK LTD V CHYKE INT’L LTD (2003) FWLR (PART 141) 1903 PER AKAAHS JCA AT PAGE 1935 PARAGRAPH C- E** was relied upon.

ON ISSUE 2

Mr Adaja argued that the writ of summons was filed on 21st May 2019 whereas the statement of claim was filed on 13th of June 2019, and both were clearly not filed jointly as required by Order 2 Rule 2 (2) of the Rules of this court.

He thus urged that this willful disobedience of obligatory court rules renders the issuance of the writ of summons invalid, null and void, thus robbing the Honourable court of jurisdiction to hear the matter.

ABUBAKAR V NASAMU (NO2) (2012) 17 NWLR (PT 1320) 523 AT 530 PARAGRAPH 11; UBN V LAWAL (2012) 6 NWLR (PT 1295) 186 and other authorities were relied upon.

Mr Nafagha replied that this suit was commenced under the undefended list procedure pursuant to Order 35; High Court of Abuja (Civil Procedure) Rules 2018.

That the writ of summons was issued together with an affidavit in support and pre-action counseling form and exhibits.

That the court suo motu ordered the Claimants to file a statement on claim and serve same on the Defendants. Thus the statement of claim filed on 13th June 2019 was filed and served on the order of the court and a step taken in compliance with the order of court cannot be incompetent. **NIGERIA**

DEVELOPMENT CO. LTD V ADAMAWA STATE WATER BOARD (2018) ALL FWLR (PT 422) 1053, PG 1081 PARAGRAPH B-D was relied upon.

The court was urged to dismiss the objection with costs of ₦100,000 against the Defendants.

RESOLUTION

I have considered the affidavit in support of the objection and the written and oral arguments of learned counsel on both sides.

I shall also adopt the two issues raised by Mr Adaja in his preliminary application.

ON ISSUE 1

It is well settled that jurisdiction is the livewire of a court as no court can entertain a matter where it has no jurisdiction. Where the court does so, the decision arrived at will be a nullity however well conducted. See **UTIH V. ONOYIVWE (1991) 1 NWLR (PT 166) 166; MADUKOLU V. NKEMDILIM (1962) 2 ALL NLR (PT 11) 5; JEV & ANOR V. IYORTYOM & ORS (2014) LPELR-23000 (SC) P. 39 PARA B-E.**

Order 3 Rules 2 and 3 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 provides:

“2) All actions for recovery of penalties, forfeitures, and all actions against public officers may be commenced and tried in the judicial division in which the cause of action arose.

3) All suits for the specific performance or upon breach of any contract may be commenced and determined in the judicial division in which such contract ought to have been performed or in which the defendant resides or carries on business.”

It is trite law that it is the Claimant's claim that determines the jurisdiction of the court. See **ABIA STATE TRANSPORT CORPORATION & ORS V QUORUM CONSORTIUM LIMITED (2009) LPELR – 33 (SC) PAGE 20 PARAGRAPH D-E** per Onnoghen JSC (as he then was).

In the instant case the Claimant in paragraph 3 of her statement of claim pleaded that:

“3. Claimant further avers that on 11th of September, 2017, the 1st Defendant came to the Claimant's car stand in Kubwa Expressway, Abuja which is within the jurisdiction of this Honourable court and asked Claimant to supply him a Toyota Ralph 4 Jeep 2014 model for the sum of ₦9,000,000 (Nine Million Naira) only.”

It was pleaded in paragraph 4 of the statement of claim that the said vehicle was delivered to the 1st Defendant in Lokoja, Kogi State.

In paragraph 5 of the statement of claim it was pleaded that the 1st Defendant further asked the Claimant to supply him a Toyota Camry 2012 model and Toyota Camry 2009 model.

In paragraph 7 it was pleaded that both vehicles were also delivered to the Defendant in Lokoja, Kogi State.

Now, it is nowhere stated in the statement of claim that the 1st Defendant who was sued in his personal capacity or indeed either of the Defendants was resident in Lokoja, Kogi State at the time relevant to this suit. It was in the affidavit in support of the motion on notice No M/9218/19 for extension of time to file their joint statement of defence and in the affidavit in support of the preliminary objection that the 1st Defendant brought up the issue of his residence at Lokoja, Kogi State.

In fact in the statement of claim the address of the 1st Defendant was given as Plot 1, No 1, Gorauo Street off Nouakchott Street Wuse Zone 1, Abjua and the address of the 2nd Defendant was given as Suite 52, Nnedu Plaza, Wuse Zone 5 Abuja.

Upon being served, none of the Defendants objected to being served the court processes at their Abuja addresses. They proceeded to file a conditional memorandum of appearance, a motion on notice for extension of time, and their joint statement of defence and then this preliminary objection on territorial jurisdiction and competence of the writ on the ground that the cause of action arose in Lokoja.

Indeed even if the statement of defence is to be considered, it is nowhere therein pleaded that the Defendants do not reside in FCT, Abuja nor was it denied that the 1st Defendant came to the Claimant's car stand at Kubwa Expressway to ask the Claimant to supply him a vehicle.

Therefore from the pleadings before the court, it is abundantly clear that both Defendants resident in FCT Abuja and that the contract was entered into in FCT Abuja. I must not fail to mention however, that the Claimant counsel's submission that the 2nd Defendant gave his address in his testimony as No 3, Near Police Post, Zone 6 Wuse Abuja is wrong as it was the Claimant who gave that address as Claimant's address in his testimony as PW2.

In **ARJAY LIMITED & ORS V. AIRLINE MANAGEMENT SUPPORT LTD (2003) LPELR-555 (SC)** the Supreme Court held that territorial jurisdiction of a court can be determined by:

- (a) Where the contract in question is made
- (b) Where the contract is to be performed

(c) Where the Defendant resides see EGBO V LAGUMO (1988) 3 NWLR (PT 80) 109 AT 126-127.

In the instant case, it is clear to me that the contract for the supply of vehicle was made in FCT Abuja. It is equally clear that the Defendants reside in Abuja. There is therefore nothing that robs this Honourable court of the jurisdiction to determine this matter.

Accordingly, I hold that this court has jurisdiction to entertain this suit.

ON ISSUE 2

Whether the originating processes particularly the statement of claim filed by the Claimant is competent.

It is quite correct as submitted by Mr. B.O. Nafagha that this suit was instituted on 21st May 2019 under the undefended list procedure. The writ was filed along with an affidavit in support with exhibits attached, certificate of pre-action counseling signed by the Claimant and his legal practitioner.

The court in chambers (suo motu) upon perusing the processes filed determined that the matter was not suitable to be heard under the undefended list and directed that the Claimant's counsel file a statement of claim and serve same on the Defendants. Thus it was in obedience of the court's directive/order that the Claimant filed the statement of claim and the witness statement on oath of Francis Samuel Audu on 13th June 2019.

All the processes have been duly served on the Defendants since 4th July 2019. The Defendants filed their statement of defence on 8th August 2019 deemed properly filed and served on 3rd October 2019.

Order 5 Rule 1 (1) and (3) of the Rules of this court provide:

“(1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.

(3) The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this (these) Rules to be begun by an originating process other than the one used.”

In the present circumstances, the court having ordered/directed that the Claimant’s counsel file a statement of claim and the order/directive having been obeyed, the originating processes as filed are competent.

I am in total agreement with Mr. Nafagha that a step taken in compliance with the order of the court cannot be incompetent.

Having considered all the above, I hold that this suit is competent and the court has jurisdiction. The notice of preliminary objection is dismissed.

Nafagha: We ask for costs of ₦100,000 for the very long delay caused by this notice of preliminary objection. He knew very well the objection will not succeed yet he kept throwing spanners in the works.

Adaja: We oppose the application for costs because there is no party in court. Costs are for parties and not for counsel.

We have not caused any delay. Our application was moved on 9th December 2020 and ruling was delivered today. We challenged the court’s jurisdiction; we could not have known how it would go.

Court: No costs awarded. Matter adjourned to 11th May 2021 for definite defence.

Hon. Judge